

APPEAL NO. 022309
FILED OCTOBER 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 15, 2002. The hearing officer determined that (1) the compensable injury of _____, does not extend to or include the medical conditions referenced in the left knee MRI of February 28, 2002; and (2) the appellant (claimant) did not have disability. The claimant appeals the hearing officer's determinations on sufficiency grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

EXTENT OF INJURY

The claimant testified that he sustained injuries to his left knee on _____, when he struck his knee against the steering column in the employer's vehicle. The claimant was initially diagnosed with a left knee strain by his treating doctor. It is undisputed that the carrier accepted the left knee strain and paid benefits as they accrued. On February 28, 2002, an MRI of the claimant's left knee revealed multiple conditions including tenosynovitis, tibial bruise, and medial meniscus tears. The carrier disputed the conditions contained in the MRI report as not consistent with or arising from the mechanism of injury.

The claimant argues that the carrier waived its right to dispute the extent of injury under section 409.021, regarding the initiation of benefits. We note that the claimant sought to add the issue of carrier waiver at the hearing below. The hearing officer denied the request, however, stating that section 409.021 does not apply to disputes of extent of injury. We perceive no error in the hearing officer's treatment of the carrier waiver issue. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). To be clear, the waiver provisions of section 409.021 do not preclude the carrier's dispute of conditions contained in the MRI report. See Texas Worker's Compensation Commission Appeal No. 022021, decided September 30, 2002, citing Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)).

Whether the compensable injury extended to or included the claimed conditions was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and

preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

DISABILITY

The claimant asserts that he is entitled to a finding of disability by virtue of the fact that the carrier accepted a compensable injury in the form a left knee strain and he subsequently lost time from work. Disability is defined as the inability *because of a compensable injury* to obtain and retain employment at wages equivalent to the preinjury wage. (Emphasis added). Section 401.011(16). Whether the compensable left knee strain was a cause of the claimant's inability to obtain and retain employment at preinjury wages rather than some other condition was a question of fact for the hearing officer to resolve. The hearing officer, as sole judge of the weight and credibility of the evidence, could disbelieve the claimant's evidence and determine that the compensable injury was not a cause of the claimant's lost wages. In view of the evidence presented, we cannot conclude that the hearing officer's disability determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge